

BOARD OF APPEALS CASE NO. 5139

BEFORE THE

**APPLICANTS: Carol Aguilar and
Marguerite Bailey**

ZONING HEARING EXAMINER

**REQUEST: Variance for an existing dwelling
and proposed sun room within the required rear
yard setback; 1910 Cherry Place, Edgewood**

OF HARFORD COUNTY

Hearing Advertised

Aegis: 4/18/01 & 4/25/01

HEARING DATE: May 30, 2001

Record: 4/20/01 & 4/27/01

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Carol J. Aguilar and Marguerite Bailey, are requesting a variance, pursuant to Harford County Ordinance 6, Section 10.05, for an existing dwelling and proposed sun room within the required 35 foot rear yard setback (existing dwelling 22 feet, proposed sun room 20 feet), in an R3/CDP District.

The subject property is located at 1910 Cherry Place, Edgewood, MD 21040, and is more particularly identified on Tax Map 65, Grid 3F, Parcel 649. The subject parcel consists of 9,606 square feet, is located within the Edgewood Meadows subdivision, and is presently zoned R3/CDP. The property is entirely within the First Election District.

Appearing before the Hearing Examiner was Carol Aguilar, the Applicant herein, who indicated that she has an existing 16 foot by 20 foot cement patio to the rear of her house which has been sinking severely over the past several years. Her theory is that the footers were not properly laid at the time of that construction. The Applicant indicated that she proposes a permanent addition of a family room where the enclosed patio exists today. She indicated that her property is a corner lot, subject to two front yard setbacks and that the current structure has existed at its present location in excess of 25 years. She indicated that the family room addition will be an enhancement to her property and will certainly correct an unsightly and potentially unsafe condition located to the rear of her dwelling, and she did not feel that there would be any adverse impact to any neighboring property as a result of her request and the resulting construction. The completed structure will encroach 15 feet into the 35 foot required setback, being 20 feet from the property line.

Case No. 5139 – Carol Aguilar and Marguerite Bailey

The witness believed that her lot is unique and indicated that there was simply no other place to put any addition to the rear of her house without also requiring a variance. The witness did not believe there would be any adverse impacts to adjoining properties or to the purposes and intent of the Harford County Code.

The Department of Planning and Zoning reviewed the requested variance and found that the subject property was unique because it was a corner lot and the house was set at an angle facing an intersection and was subject to two front yard setbacks, reducing severely the buildable envelope to the rear of the home. The Department found that the existing sun room had existed for more than 20 years and, perhaps, longer, and there was no reason to conclude that upgrading this existing structure and creating a family room in its place would create any additional impacts on adjacent properties.

No persons appeared in opposition to this request.

CONCLUSION:

The Applicants, Carol J. Aguilar and Marguerite Bailey, are requesting a variance, pursuant to Harford County Ordinance 6, Section 10.05, for an existing dwelling and proposed sun room within the required 35 foot rear yard setback (existing dwelling 22 feet, proposed sun room 20 feet), in an R3/CDP District.

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

Case No. 5139 – Carol Aguilar and Marguerite Bailey

The Maryland Court of Appeals has provided guidance in matters of variance requests and described a two-step analysis in determining whether such requests should be granted. According to the guidance provided by Court, the variance process is a two-step, sequential process:

1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties, such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration of whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists. Cromwell v. Ward, 102 Md. App. 691 (1995).

The Hearing Examiner finds that the subject property is unique in that it is a corner lot, subjected to two front yard setbacks. Because of the reduced building envelope to the rear of the property created by this configuration, practical difficulty results in the addition of any structure to the rear of the property. The Hearing Examiner finds that there will be no substantial detriment to adjacent properties and the purposes and intent of the Code will not be materially impaired.

The Hearing Examiner, therefore, recommends approval of the requested variance, subject only to the condition that the Applicants obtain any and all necessary inspections and permits.

Date JUNE 20, 2001

William F. Casey
Zoning Hearing Examiner